



Memorandum

June 25, 2007

TO: Honorable Jim DeMint
Attention: Wendy Fleming

FROM: Blas Nuñez-Neto
Analyst in Domestic Security
Domestic Social Policy

SUBJECT: Trigger Language in S. 1639

This memorandum is in response to your request concerning the trigger provisions in S. 1639, the Comprehensive Immigration Reform Act. Specifically, you asked CRS to analyze whether the \$4.4 billion that would be authorized by the bill to fund the trigger provisions could be used to fund the processing of Y and Z visas. As such, this memorandum will be restricted to a discussion of Sections 1 and 2 of S. 1639. If you have any questions concerning this memorandum, I can be reached at 7-0622.

Section 1 of S. 1639

Section 1 of S. 1639 would establish certain requirements that must be met by the Department of Homeland Security (DHS) before the programs in Titles IV and VI of the Act “that grant legal status to any individual or that adjust the current status of any individual who is unlawfully present in the United States to that of an alien lawfully admitted for permanent residence” can be implemented. The Act would make exceptions to this requirement for: the probationary benefits conferred by Section 601(h); the provisions of Subtitle C of Title IV (relating to non-immigrant visa reform); and the admission of aliens under Section 101(a)(15)(H)(ii) of the Immigration and Nationality Act (as amended by S. 1639).

Prior to the implementation of the majority of the programs in Titles IV and VI, the Secretary of DHS would be required to certify in writing to Congress and the President that each of the following measures (commonly referred to as “triggers”) are “established, funded, and operational:”

- DHS has “established and demonstrated operational control of 100 percent” of the land border between the United States and Mexico.
- Customs and Border Protection (CBP) has hired, trained, and deployed 20,000 United States Border Patrol (USBP) agents.

- CBP has installed 300 miles of vehicle barriers, 370 miles of fencing, 105 ground-based radar and camera towers, and deployed 4 unmanned aerial vehicles to the border.
- DHS is detaining all removable aliens apprehended crossing the border illegally, except as specifically mandated by federal or state law or humanitarian circumstances. Additionally, Immigration and Customs Enforcement (ICE) would need to have the resources to maintain this practice, including the ability to detain 31,500 aliens on a daily basis.
- DHS has established and is using secure, effective identification tools to verify the identity of workers and prevent unauthorized aliens from obtaining employment in the United States. These tools should include the use of secure documentation that contains photographs and biometric information on the work-authorized aliens and comply with the requirements established by the REAL-ID Act (P.L. 109-13, Div. B). Additionally, DHS would be required to establish an electronic employment eligibility verification system capable of querying federal and state databases in order to provide employers with a digital photograph of the alien's original federal or state issued identity or work-authorization documents.
- DHS has received, is processing, and is adjudicating in a timely manner applications for Z non-immigrant status under title VI of this Act.

The Administration would be required to submit a report within 90 days of the enactment of S. 1639, and every 90 days thereafter until the trigger requirements are met, detailing the progress made in funding and satisfying each of the requirements outlined above. The Governmental Accountability Office (GAO) would be required to submit a report within 30 days of DHS' written certification that the trigger provisions have been met concerning the accuracy of that certification.

Section 2 of S. 1639

Section 2 would establish a new account within the DHS appropriation known as the "Immigration Security Account," and would endow this account with a transfer \$4.4 billion from the Treasury's general fund. These funds would be available for use by DHS for five years after the enactment of S. 1639 in order to meet the trigger requirements outlined above.

Section 2 further stipulates that, "to the extent funds are not exhausted" in carrying out the trigger requirements,¹ they would be available to be used for any of the following additional activities:

- Fencing and infrastructure;
- towers;
- detention beds;
- the employment eligibility verification system, including funds relating to the State Records Improvement Grant Program outlined in Section 306;
- implementation of the programs authorized by titles IV and VI; and,

¹ Section 2(3)(C) appears to include a minor drafting error: the actual language is "to the extent funds are not exhausted pursuant to (b), they shall be available..." However, Section 2 does not include a subsection b. It appears, however, that the intent of subsection C is to refer to subsection B. A similar drafting error appears to exist in Section 2(4).

- other federal border and interior enforcement requirements to ensure the integrity of the programs authorized by titles IV and VI.

This language appears to require DHS to expend the funds in the Immigration Security Account to meet the trigger requirements in Section 1 prior to funding the additional activities outlined above. DHS would be given the authority to transfer funds from the Immigration Security Account as needed to fund the trigger requirements and the additional purposes outlined above.

DHS would be required to submit an expenditure plan for the Immigration Security Account funds to the Senate Committees on Judiciary and Appropriations within 60 days of enactment, and annually thereafter, identifying:

- one-time and ongoing costs;
- the level of funding for each program, project, and activity and whether that funding supplements an appropriated program, project, and activity;
- the amount of funding obligated in each fiscal year by program, project, and activity;
- the milestones required for the completion of each identified program, project, and activity; and
- how these activities will further the goals and objectives of the Act.

Lastly, DHS would be required to notify the Senate Committees on Judiciary and Appropriations 15 days prior to the reprogramming of funds from their original allocation or the transferring of funds out of the Immigration Security Account.

Conclusion

In response to your question concerning whether the \$4.4 billion in funding appropriated under the Immigration Security Account could be used to fund the processing of Y or Z visas under Titles IV and VI of S. 1639, S. 1639 appears to require that the trigger mechanisms be funded first. Receiving, processing, and adjudicating applications for the Z visa authorized by Title VI of the Act *is* one of the trigger mechanisms outlined in Section 1; this means that funding from the Immigration Security Account could be used for this purpose. Section 2(C) would allow DHS to expend any funds remaining *after* the trigger mechanisms have been fully funded on certain activities, including the implementation of the programs authorized in Titles IV and VI of the Act. Thus, it appears that funding for the Y visa (and other programs) authorized by Title IV of the Act could only be made available through the Immigration Security Account *once the trigger mechanisms had been met*. However, S. 1639 *does not explicitly stipulate* whether the certification required by Section 1 would have to take place prior to funding being made available for the additional purposes outlined in Section 2(C).